

ORDINANCE NO. 16270-01-2005

AN ORDINANCE AMENDING THE COMPREHENSIVE ZONING ORDINANCE OF THE CITY OF FORT WORTH, BEING ORDINANCE NO. 13896, AS AMENDED, CODIFIED AS APPENDIX "A" OF THE CODE OF THE CITY OF FORT WORTH BY AMENDING SUBSECTION K "PRESERVATION OF TREES" OF SECTION 6.301 "LANDSCAPING" OF ARTICLE 3, "LANDSCAPING AND BUFFERS" TO ADD REGULATIONS ON THE REMOVAL OF PROTECTED TREES EQUAL TO OR GREATER THAN SIX INCHES IN DIAMETER ON A PARCEL OF LAND GREATER THAN ONE ACRE; TO AMEND CHAPTER 9 "DEFINITIONS" TO ADD DEFINITIONS RELATED TO TREE PRESERVATION; PROVIDING A SAVINGS CLAUSE; PROVIDING A PENALTY CLAUSE; PROVIDING FOR PUBLICATION IN THE OFFICIAL NEWSPAPER; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, in order to maintain and enhance a positive image and a livable city it is important to promote site planning which furthers the preservation of mature trees and to protect trees during construction, to facilitate site design and construction which contribute to the long term viability of existing trees and to control the removal of trees when necessary

WHEREAS, at the November 2, and 9, 2004 City Council meetings, citizens spoke about concerns of clear cutting in their community, provided numerous pictures and testimony about actual examples of clear cutting that has happened in areas surrounding their homes and neighborhoods, and requested the City Council to put an immediate moratorium on clear cutting;

WHEREAS, on November 16, 2004, the City Council approved Ordinance Number 16208 (Mayor and Council Communication PZ-2556) establishing a thirty day moratorium on the removal of protected trees equal to or greater than six inches in diameter on an acre or larger parcel of land without a permit from the City Forester;

WHEREAS, the moratorium was enacted and continued in order to maintain the status quo while the Citizen Advisory Committee continues to the study of the adoption of a tree preservation ordinance;

WHEREAS, the Government and Neighborhood Relations Committee established a committee consisting of two City Council members, a Zoning Commission member, representatives from neighborhood and builder associations, Scenic Fort Worth, the Fort Worth Garden Club, utility companies, real estate investors, urban forestry and other interested parties to study the practices in other cities and advise the Council Committee on possible regulations related to tree preservation;

WHEREAS, it is anticipated that the Citizen Advisory Committee will be prepared to make a recommendation on regulations related to tree preservation to the Council Committee in February 2005;

WHEREAS, the Citizen Advisory Committee recommended the adoption of interim regulations to regulate the removal of protected trees during the time the committee compares and analyzes other tree preservation ordinances in order to make a recommendation on regulations to the Council Committee and the full City Council;

WHEREAS, on December 14, 2004, the City Council approved Ordinance Number 16232 (Mayor and Council Communication G-14617) extending the moratorium until January 28, 2005 to allow time for the Zoning Commission and City Council to consider interim regulations;

WHEREAS, it is advisable to adopt the following interim regulations in order to allow the City to complete the public process for consideration of amendments to the Zoning Ordinance to provide regulations for the protection and replacement of trees as recommended by the citizen advisory committee;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS

SECTION 1.

Subsection K “Preservation of Trees” of Section 6.301 “Landscaping” of Article 3, “Landscaping and Buffers” is hereby amended to add new language related to tree preservation to read as follows:

K. Preservation of Trees.

1. Intent

a. It is recognized that there is a need to establish regulations addressing the protection of healthy and significant trees and to provide for the replacement and replanting of trees that are necessarily removed during construction, development or redevelopment.

b. It is the intent of these regulations to limit the removal of protected trees six inches (6”) in diameter on a parcel of land greater than one acre without a permit from the City Forester, to promote the orderly development of the City of Fort Worth, and to protect the public health, safety and general welfare of the citizens of the City of Fort Worth. It is not the intent of these regulations to deny development rights protected by law.

c. Further, it is the intent of the City to address the removal and replacement and replanting of trees that are necessarily removed during construction, development or redevelopment in an expeditious manner and with due regard for the legal rights of property owners in Fort Worth.

2. Approval of Tree Removal Permits

a. Except as otherwise provided herein, on and after the effective date of this ordinance, no person shall remove any protected tree equal to or greater than six inches (6”) in diameter on parcel of land greater than one acre in size without a Tree Removal Permit from the City Forester.

b. Land in which a valid building permit has been issued or a Community Facilities Agreement has been executed prior to the effective date of this ordinance are not subject to these regulations.

c. The removal of protected trees in the case of an emergency, such as due to storm damage to utilities, shall not be subject to these regulations or require a Tree Removal Permit.

d. The City Forester or other city official responsible under city regulations for reviewing a Tree Removal Permit, as defined herein, shall determine whether the Tree Removal Permit is subject to these regulations. Acceptance of a Tree Removal Permit for the limited purpose of such review shall not constitute filing or acceptance of the permit. In the event the City Forester determines an application is subject to the regulations, the City Forester shall be responsible for the review and approval of all requests for all Tree Removal Permits. The City Forester shall review the permit application, perform an on-site analysis of the site and trees and make a determination which trees can be removed using the following criteria:

1. The protected tree is located in a public utility easement, public access easement or public street right-of-way as recorded on a plat and accepted by City Council and removal would be in compliance with the current City Code;
 2. The protected tree is in an unsafe condition, or is injurious to the common good, or to sewer pipes, pavements or improvements, or is infested and dangerous to other trees or conflicts with other ordinances or regulations; or
 3. The protected tree would interfere with the construction of a building, parking or parking approaches, gas drill sites, and other improvements.
- e. The City Forester may accept a reforest plan that provides a one-diameter inch per one-diameter inch tree replacement when protected trees are removed outside the building envelope, parking approaches, gas drill sites or other improvements. The tree replacement plan will set a minimum of 3-inch diameter tree as a replacement tree. If replacement cannot be provided on-site, the applicant shall be required to pay into the City's Tree Planting Fund at a cost of \$125 per diameter inch of protected trees removed. All preservation of trees will count toward the project's landscape requirement without regard to location or limitation to substitution of trees for shrubs.
- f. In order to encourage the preservation of existing trees, the area within the dripline of trees over size caliper inches that is protected by fencing during grading and construction and included in the required landscape area shall receive double credit toward the required landscape area.

3. Protected Trees

Redbud
 Mexican plum
 Cherry laurel
 Eve's necklace
 Crab apple
 Bradford pear
 Golden Raintree
 Cado Maple
 Red Maple
 Bigtooth maple
 Bur oak
 Chinquapin oak
 Live oak
 Shumard red oak
 Texas red oak
 Post oak
 Blackjack oak
 Pecan
 Lacebark elm
 Cedar elm
 American elm
 Bald cypress
 Black walnut
 Green ash
 Texas ash
 Southern magnolia

Cercis Canadensis
Prunus mexicana
Prunus caroliniana
Sophora affinis
Malus angustifolia
Pyrus calleryana var. *Bradford*
Koelrueteria paniculata
Acer saccharum
Acer rubrum
Acer grandidentatum
Quercus macrocarpa
Quercus muhlenbergii
Quercus virginiana
Quercus shumardii
Quercus texana
Quercus stallata
Quercus marilandica
Carya illinoensis
Ulmus parvifolia
Ulmus crassifolia
Ulmus americana
Taxodium distichum
Carya nigra
Fraxinus pennsylvanica
Fraxinus
Magnolia grandiflora

4. Appeals.

- a. If the City Forester, or other city official refuses to accept or issue a Tree Removal Permit, or the applicant disagrees with the decision of the City Forester, the applicant may appeal the decision to the City Council. The appeal shall be in writing and shall be transmitted to the Office of the City Attorney within ten days after receipt of notification that the City Forester will not accept the Tree Removal Permit.
- b. The appeal shall be considered by the City Council within 30 days after the appeal is received in the Office of the City Attorney, unless the applicant requests a later hearing. The City Council shall not release the applicant from the requirements of this ordinance, unless the applicant first presents credible evidence from which the City Council can reasonably conclude application of this ordinance to the applicant would be likely to deprive the applicant of rights protected by law.
- c. The City Council may take the following actions on an appeal:
 1. Deny the appeal, in which case the Tree Removal Permit shall not be accepted or granted; or
 2. Grant the appeal, and direct the City Forester to accept and approve the Tree Application Permit.
 3. Grant the appeal subject to such provisions, conditions, or limitations as deemed appropriate by the City Council.
- d. In no event shall acceptance of an application guarantee that the City will issue the Tree Removal Permit, unless the permit application is in compliance with all applicable codes, laws and regulations.

5. Penalty

Any person, firm, or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be assessed a penalty of One Hundred Seventy Five Dollars (\$175.00) per diameter inch of the protected trees removed or damaged without a valid Tree Removal Permit and be guilty of a misdemeanor and upon conviction shall be fined not more than Five Hundred Dollars (\$500.00) for each offense.

SECTION 2.

Ordinance No. 13896, the zoning ordinance of the City of Fort Worth, Section 9.101, "Defined Terms," is hereby amended by adding new definitions related to tree preservation as follows:

- (1) **CITY FORESTER:** For the purpose of tree preservation, that person designated by the Parks and Community Services Director to provide administrative review of Tree Site Plans and issue Tree Removal Permits.

- (2) **DIAMETER OF A TREE:** That measurement of the size/diameter of a tree as determined by measuring at four and one-half feet (4.5') above ground. For a multi-trunk tree, the diameter shall be the total diameter of the largest trunk plus half (1/2) the diameter of each additional trunk.
- (3) **PROTECTED TREE:** A tree that the City has determined has significant positive characteristics worthy of preservation as listed in Section 6.301.K that has a diameter of six inches (6") or greater.
- (4) **SITE PLAN:** A plan showing the location all the protected trees by size and species that are six inches (6") or greater on the site, the location of all easements, the location of all proposed buildings, a grading plan, if applicable; the protected trees desired to be removed, the protected trees that shall remain on the site, and an accompanying document indicating the reason for the proposed removal of any protected tree, and if applicable, a description on how the existing healthy protected trees proposed to be retained will be protected from damage from construction.
- (5) **TREE REMOVAL:** The cutting, destroying, removing, moving, poisoning, banding, marking, or effectively destroying through damaging, any protected tree situated on property regulated by the Zoning Ordinance without first obtaining a tree removal permit from the City Forester.
- (6) **TREE REMOVAL PERMIT:** A permit required to be issued by the City Forester prior to the removal of any protected tree greater than six inches (6") in diameter or greater on land greater than one acre.

SECTION 3.

This ordinance shall be cumulative of all provisions of ordinances and of the Code of the City of Fort Worth, Texas (1986), as amended, except where the provisions of this ordinance are in direct conflict with the provisions of such ordinances and such Code, in which event conflicting provisions of such ordinances and such Code are hereby repealed.

SECTION 4.

It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this ordinance are severable, and, if any phrase, clause, sentence,

paragraph or section of this ordinance shall be declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional phrase, clause, sentence, paragraph or section.

SECTION 5.

Any person, firm, or corporation who violates, disobeys, omits, neglects or refuses to comply with or who resists the enforcement of any of the provisions of this ordinance shall be assessed a penalty of One Hundred Seventy Five Dollars (\$175.00) per diameter inch of the protected trees removed or damaged without a valid Tree Removal Permit and be guilty of a misdemeanor and upon conviction shall be fined not more than Five Hundred Dollars (\$500.00) for each offense.

SECTION 6.

All rights and remedies of the City of Fort Worth, Texas, are expressly saved as to any and all violations of the provisions of Ordinance No. 13896 which have accrued at the time of the effective date of this ordinance and, as to such accrued violations and all pending litigation, both civil and criminal, whether pending in court or not, under such ordinances, same shall not be affected by this ordinance but may be prosecuted until final disposition by the courts.

SECTION 7.

The City Secretary of the City of Fort Worth, Texas, is hereby directed to publish the caption, penalty clause and effective date of this ordinance for two (2) days in the official newspaper of the City of Fort Worth, Texas, as authorized by Section 52.013, Texas Local Government Code.

SECTION 8.

This ordinance shall take effect upon adoption and publication as required by law.

APPROVED AS TO FORM AND LEGALITY:

Steve J. Hillander

Assistant City Attorney

ADOPTED: 1-18-05

EFFECTIVE: February 2, 2005